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[For general information on the payment of blood-money in retribution for homicide, see Category 682.]

*613 578 571 554 the Bedouins. Conflict regulation treats the expressions of social conflict and not its causes.

The 'aqila regulates conflict between the members of his tertiary segment, between this group and the other groups of the secondary unit, and between secondary units of the tribe. He operates in both the internal and external systems *613 578 593 554 [596] of authority relations. The 'aqila may pre-empt the authority of the shaib in the sphere of familial authority, though the Bedouins say, this seldom happens because the son is willing to obey his father. Having been reared in the culture, and as a future father himself, the son supports the respect-*613 578 593 428 554 discipline principle of Bedouin society. But in extreme cases, such as the threat of a father to disown his son, the explicit approval of the 'aqila, and of all the 'awaaqil of the secondary corporate group, is necessary. This is the procedure in all cases of banishment. In one case (which I document below), a man disinherited his younger brother with the formal approval of his awaaqil.

*613 682 578 [181] [681] The tertiary group in Bedouin society is by definition the blood-vengence group. However, in view of the common values and pragmatic interests of its members, the secondary group fulfills this function. Traditionally, when revenge killings were carried out according to the lex talionis, it was usually at the hand of some member of the victim's tertiary group. In the case of protracted conflict, such as extended

*613 554 69 [671] [178] on paper in triplicate, one copy going to each litigant and a third copy to the chief of police of the Marsa Matruh sector. In practice, though, a copy usually goes to the litigants, but not to the chief of police (who had not a single Bedouin court case in his files).

*613 695 692 [671] As is not the case in Islamic law, in Bedouin customary law the decision of the judge may be appealed. The system of appeals may even function at the level of familial authority, i.e., the son may, in theory, appeal a ruling by his own father. The Bedouins insist that this is an important right of every man. In the situation where a man wishes to appeal a decision of his own 'aqila, he will generally take his claim to another 'aqila of his secondary group. When an appeal is to be made, it is done with the permission of the 'aqila who rendered the original decision. The one who appeals his case does so with the understanding that the decision returned by the court of appeal will be final and binding. Further, if the court of appeal concurs with the findings of the original court, the plaintiff pays a double fine (twice the original fine), and also pays his own 'aqila an expiation fee (kubaara). [681]

69 648 [682] [685] The Egyptians have preferred to leave the Bedouins of al-Qasr to settle their own disputes except in the more serious criminal matters. Police from Matruh will enter homicide cases and those conflicts over property rights which threaten to explode into tribal warfare. But these types of conflict have

627 from the owner of the dog. If the man had refused to pay the
596 price of the chicken, as demanded for settlement, then the
685 next step would have been to inform the appropriate 'aqila
* [613] to bring greater force, and perhaps greater sanctions, to bear.

* 613 Bait 'Umar (Figure 8) is one of the authority groups
571 of al-Qasr, a corporate group represented by a corporate sole.
682 Both the tertiary corporate group and the corporate sole are referred to, according to the ancient tradition of the Bedouins, as an 'aqila. This group is a blood-revenge group, and is referred to as 'umraa al-dam ("donator of blood"), or waliiy al-dam ("executor of a blood feud"). It is the group which
• [681] decides whether or not retaliation will be taken according to lex talionis, or if blood-money as compensation for the loss of one of its members is acceptable. The Bedouins say that no amount of money can replace a human life, that blood-money is only a means to prevent the loss of more men. This group, when it functions as waliiy al-dam ("executor of a blood feud"), has the authority to demand retaliation; to waive it entirely; or to demand, along with blood-money, that the guilty party be punished by his 'aqila. When this group pays or receives blood-money it does so as a partner in the larger corporate group, the secondary segment. The principle of collective responsibility interplays with the other structural principles of Bedouin society. The convergence represents

6. every member of the tribe who submits a complaint without first consulting his 'aqila, (i.e. who goes to the government before the 'aqila),

7. every member of the tribe shall back the members of his bait against an opponent without right,

8. every member of the tribe who has proved against him the showing of sympathy toward another tribe knowing that this tribe is antagonistic to his own tribe,

9. every member of the tribe who has proved against him that he helped a relative in payment or in a quarrel against his brother.

We signed this document and declare that these customs are valid from the date of today and everyone who disobeys them pays a dhabiiha ("lamb") and 10 L.E. without any objection if any of the items of the above items is proven against him.

Date: August 8, 1953
The 'awaaqil (signatures or stamps):
Abd al-Ruwaf (Bait Firjani)
Hussain 'Umar (Bait 'Umar)
Shi'ath Abd al-Hadi (deceased, Bait Braik)
'Atiya 'Umran (Bait Kailani)
Khalid Idris (Bait Muhammad)

In the rawaabit, or contract, just noted the term "tribe" refers to the secondary segment ('aiela). Murray (1935:315n) has also pointed to an instance of the Bedouins' use, in a formal document, of the word qabiila ("tribe") when reference to "some smaller division, such as 'eila is clearly meant."

Through the rawaabit norms are expressed and action is oriented with respect to them. If it is otherwise, sanctions may be brought to bear to insure conformity to norms. The minimal sanction which the 'aqila may impose is the dhabiiha

675 ("blood sacrifice") and a fine of 10 L.E. The most serious
•681 sanction which the group, through the 'aqila, can administer
*613 is banishment. In this case, the decision "to wash one's hands of another" may originate with the 'aqila but must be executed by the next of kin, or the process can originate with the next of kin and be carried out with the approval of the 'awaaqil. In any case, it is an ultimate negative sanction which ranks with blood-revenge in degree of seriousness, since social and political status is withdrawn from the person. A banished person is no longer protected in accordance with the principle of collective responsibility, and his group may no
675 longer demand blood-money for his life. The charter of 'Ailit
*613 Lazumi presented below is similar in most respects to that of
571 'Ailit Ma'fas with the exception that it makes provision for
681 the barawwa, the act of banishing from the group. The document was issued in four copies to each of the 'awaaqil of Lazumi. Note that in both charters thus far shown, not only are the individuals of the group bound by the rules but also, the 'aqila comes under the rule of law.

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*613 BONDS BETWEEN MEMBERS OF 'AILIT LAZUMI
571 AL-'AISHAIBAT, (Wednesday, January 19, 1952)

681 In the name of God the Merciful and Compassionate

539 In the presence of 'Umran Kailani, Hajj 'Ali, the 'awaaqil and individuals of Bait Bu Jafaila who signed below, this agreement took place and the 'awaaqil of this 'aiela are:

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1 - Hajj Salah Bu Jafaila, 'aqila of Bait Bu Halaiqa
2 - Kuraim Juhami, 'aqila of Bait Uthman
3 - Ruwaf Jadalla, 'aqila of Bait Jadella
4 - Muftah Tahir, 'aqila of Bait Tahir

Every 'aqila is responsible for his family whether concerning the occurrence of problems, and collecting money from his family, or other matters. Every person who rejects the opinion of the 'aqila, or reports to the government without the consent of the 'aqila will be subjected to a fine of 10 L.E. and a dabiha according to the 'awaiyid. And every person who delays in carrying out the decisions of the 'aqila and all that he indicates will also be subject to the same fine. And also, any one who delays in swearing the oath or in supporting his family, and in so doing loses the interest which belongs to the 'aiela, he will be subject to the same fine. Any of the 'awaaqil who cause the loss of any right of the rights of the members of the 'aiela will also be subject to the same fine. And any member who makes false claims against any of the other members of the 'aiela is subject to the same fine. And any 'aqila or member from the members of the 'aiela who has proven against him an intrigue, or a quarrel, or prejudice between him and his brother or paternal cousin is subject to the same fine. He is also subject to the same fine who has proven against him prejudice in favor of another party against his paternal cousins, that is to say, the members of this 'aiela. And every 'aqila or individual who delays in signing and accepting these bonds, or in executing them, is considered an outsider by this 'aiela and the 'aiela will not be responsible for him in the future, and this will be considered a barawwa for him from the 'aiela.

This was issued in four copies to the 'awaaqil, and all previous bonds are cancelled from this date and are no longer effective.

Signatures and stamps of 'awaaqil and witnesses.

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The barawwa (literally: "the act of putting outside") is a formal procedure, formal enough to entail having the process notarized as a legal document according to Egyptian civil law. The Bedouins say that the legal document of barawwa is "to show that we have washed our hands of the

culprit, and are no longer responsible for his acts." The barawwa is not only the imposition of a most severe sanction by the group, but it is also the withdrawal of all positive sanctions which would apply to an individual as a member of the group. The withdrawal of sanctions means the withdrawal of the right of reciprocity; consequently, the banished no longer comes under the rule of succession, and he has no rights over either persons or things. The banished may claim no property of the property of the group other than that which he takes with him, and he may claim no women from the group. The barawwa, naturally enough, is uncommon in al-Qasr. The last occurred in 1957, the declaration of which is reproduced below.

DECLARATION OF BARAWWA

Law Office of Abd al-Rahman
Marsa Matruh

50 milleme tax stamp

On this date the following came: Kuraim Juhami of the 'Aishaibat on behalf of himself and his paternal uncle, and their 'umda, the first party. And there also came Sa'ad Uthman on behalf of himself and his children, the second party. The reason for the coming together of these two parties is in order to ask the barawwa from each other. Since they have all agreed by their own will without any force or ill feeling that the two parties shall not be responsible for each other's actions, it is a valid agreement that can never be rejected. No one from either of the parties is responsible to the other in supporting oaths, in paying for wounds, or in paying blood-revenge (diya), and no one from either party involved in barawwa will take girls from the other. This barawwa became a dividing line between the two parties, and if later there appears a fraternity paper, the barawwa will be cancelled and be to no avail. This paper is signed

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•681 by us and by the below mentioned witnesses to be used when it is necessary. This barawwa was issued in two copies at the hand of each of the two parties to be used in time of necessity.

Approving what is included, the first party, Kuraim Juhami (stamp)

Approving what is included the second party Sa'ad Uthman (stamp)

Witness to this:
Abd al-Rahman, the lawyer
Date: September 24, 1957

STAMP OF MINISTRY OF WAR
BORDER GUARDS
MATRUH SECTOR

Signatures or stamps of eight witnesses.

1 - Copy to Marsa Matruh Police Station
2 - Copy at the hand of the first party
3 - Copy at the hand of the second party

Seen and the original must be kept in the files of the administration of complaints, and a copy must be delivered to each of the two parties.

Signed: Colonel Ahmad Sa'ad
Marsa Matruh Police Station

Date: October 12, 1957

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591 The rawaabit in Bedouin society is essentially a charter at the tertiary level, but it structures relations at the secondary level. At the tertiary level, the charter functions to establish group boundaries and identity, and to
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591 express the conditions for membership. Group solidarity and maintenance at the tertiary level is a necessary condition for structural continuity of the larger secondary corporation: the lineage persists through these groups with replicate
060 functions, structures, and a common ancestor. That the

*613 been justified in this case since the killing was accidental.
682 In another case of killing which occurred between tertiary units of the same secondary group, we see what happens in the
*613 case of intentional killing. This case of murder in 'Ailit
682 Lazumi is interesting and valuable because it illustrates
571 the dynamics of authority relations within the secondary segment, and the degree to which authority relations are manageable without a resulting structural change.

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675 In 1959, a rearrangement of authority relations took place within 'Ailit Lazumi: Bait A and Bait B agreed that they would be collectively responsible for each other, and Bait C and Bait D made a similar compact. The compacts involved the sharing of diiya and kubaara (expiation) payments. Shortly after 1959, Bait A and Bait C quarreled, and the result of the litigation was that the 'awaaqil ordered Bait A to pay a kubaara of 20 L.E. to Bait C. Bait B, as the partner of Bait A, decided to pay 10 L.E. of the kubaara and Bait A paid the other 10 L.E. But Bait D protested this sharing of the kubaara saying that Bait B is a third brother and, as such, should act as a quwaal al-kahair ("a speaker of good"); that no brother should take sides against the others. As a result of this incident, the split between the two groups (A-B and C-D) became deeper. Afterwards, one group would not contribute to the diiya involving members of the other group even if it concerned external conflict with other secondary groups. This division in 'Ailit Lazumi was finally ended in 1960 when a member of Bait A killed a member of Bait B--the killing was within the same contractual alliance. At this time, the whole lineage decided to forget its differences and, all together, paid Bait B its diiya.

*613 Ideally, conflict should not be permitted to threaten
578 the structural continuity of the secondary corporation, but it
•[681] happens. Usually, however, safety mechanisms such as the barawwa and the right to secede are effective enough to prevent structural deterioration.

*613 structural deterioration. Secession, the right to break
571 authority relations, and adoption, the right to contract
675 new authority relations, are rights of the authority group.
*681 This can be noted in the "Declaration of Barawwa" presented
578 earlier. It was stated in that document that "the reason
[597] for the coming together of these two parties is in order to ask the barawwa from each other." Further, mention was made of a "fraternity paper" which would cancel the effects of the barawwa. So, secession can be a means of regulating
[597] conflict, and it can become the basis for a re-integrative move; that is, an adopted party may decide to secede from its foster lineage and return to its original lineage, or secondary group.

*613 Secession, as distinct from segmentary fission as a
571 response to ecological demands, represents a structural
[578] change in authority relations short of distrubing the structure of the secondary group. In a process of secession, i.e., breaking with the secondary group, joining a new secondary group, and returning to the "blood-brother" group, the fundamental condition of "belonging" is the acceptance of collective responsibility. This is a most important point. The office
*613 of 'aqila, the Bedouin charters, and the raison d'etre of the
571 corporation revolves about the notion of sharing in the blood-
681 money. This can be shown by an extremely interesting document
675 belonging to 'Ailit Abu Qarasa of al-Qasr. Here the process

*613 of secession, and the nature of the collective responsibility
571 principle in Bedouin society are made clear. The occasion of
681 the writing of this document was the issuance of a "fraternity
675 paper."

BONDS BETWEEN MEMBERS OF 'AILIT ABU QARASA

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Thanks to God alone and nothing survives but His kingdom, praise and peace to Him Who will never have a Prophet who is greater than Himself.

It came into our hands on 10 Shawal 1363 (September 9, 1944), the 'awaaqil of 'Ailit Abu Qarasa of the 'Aishaibat; and the reason for their coming together is in order to merge 'Ailit Abu Qula with the other buyuut as they were in the past. And this is in accordance with the agreement of all the parties to this paper. By the free will of all it became, as of this day, that all of the mentioned buyuut will be connected with the other buyuut in receiving and giving. But all blood-money of the mentioned buyuut which was due before the date 3 Shawal 1361, that is to say all debts for past offences, they and their former relatives will be responsible for. After this date, which is 3 Shawal 1361, each of the mentioned buyuut will share the good and the bad equally. And the 'awaiyid which the mentioned buyuut agreed upon are the following:

1 - First, he who intentionally beats his brother in the 'aiela will pay by himself and no one from the 'aiela will pay anything with him.

2 - But the offense which takes place within the 'aiela, the fine for it will be distributed in such a way that the first half of the payment will go to the offended bait and the second half will be distributed among all of the mentioned buyuut.

3 - The offense which happens to the 'aiela from an outside party, half of the payment goes to the 'aiela and the second half to the offended bait.

*613 571 •681 539 675 4 - The thief from the mentioned buyuut will be responsible for himself alone, and his relatives in blood (i.e. his bait) will be responsible for him.

5 - The one who is known to lie under oath from the mentioned buyuut, everyone who supports him must be a blood-relative from his bait.

6 - The one who delays paying the share which is requested by the 'aiela, his rich relative will pay.

7 - The one who asks for a barawwa from the 'aiela will pay what is asked for, and at the same time will also pay 20 L.E. barawwa fee for every man who fasts.

8 - The one who supports his relative from some other 'aiela against his paternal cousin will be required to pay 10 L.E. as a fine.

Signatures or stamps of the 'awaaqil of 'Ailit Abu Qarasa, and the 'awaaqil of 'Ailit Ghriba (who are the former relatives of Bait Abu Qula, the reconciled bait).

*613 554 571 [675] Every point of the above rawaabit shows the moral and political significance of the secondary group in the Bedouin community. Membership in a secondary compound authority group entitles one to political status without which the individual could not survive. The Bedouin community shares certain activities, relationships, and goals so that the aims of any individual can be achieved only by participation in social action with others: this the Bedouins have in common with every other human community (Firth 1951:41). Specifically, in considering society in terms of authority roles and authority groups, we are interested in the political community in which the Bedouins participate.

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The boundaries of the Bedouin political community may be defined so as to include all of those authority groups which operate in accordance with the recognized legal code of the Western Desert. This code is referred to as 'awaiyid Awlad 'Ali, i.e. "the customs of the sons of 'Ali." The members of the Awlad 'Ali tribe identify with each other as a group. They recognize their common heritage and speak of "the Awlad 'Ali as one." But more importantly, the Awlad 'Ali represents a political community because they are "prepared to regulate their differences by means of decisions accepted as binding because they are made in accordance with shared political norms and structures" (Easton 1959:229). Recalling the discussion of familial authority and internal and external systems of authority relations, we may think of the Bedouin political community as a composite of authority or jural groups "within which there are a moral obligation and a means ultimately to settle disputes peaceably" (Middleton and Tait 1959:9).

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In al-Qasr, political order and the articulation of political relations between secondary corporate groups depend upon something besides structural and ideological uniformities. Although blood-revenge and feuding do not take place at the internal system of authority relations, they are common means of controlling the distribution of authority and power between secondary units. Though these mechanisms or sanctions are considered "the right of the Arabs," since they do threaten

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*613 peace and security in the desert they are discouraged by
571 means of the moral and legal norms expressed in the 'awaiyid,
681 or law of the Bedouins.
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Conflict regulation between secondary groups is the
*613 function of the 'awaaqil who act as legitimate representatives
571 in terms of the rawaabit, and as legitimate judges and decision-
578 makers in terms of the 'awaiyid. Not all conflict in the external political system is, in terms of our structural levels, between secondary authority groups, but seldom is any group larger than the secondary unit mobilized for political
619 action. In other words, even where we note that conflict is
*613 between two primary units, i.e., the 'Aishaibat and the
571 Kamailat, there is probably, in fact, political action taking
578 place between two secondary groups within the respective primary groups. However, there always exists the very real possibility that greater conflict will be generated involving primary and even tribal units.

128 In the next section of this chapter, I will discuss Bedouin law and sanctions within the framework of the lineage structure and the authority levels at which they operate. The following section will further illustrate the legitimacy and dynamics of authority and structure in Bedouin society.

181 of his rights;" a man should be courageous enough to fight
641 for what belongs to him and his family. These values, which
578 become political values in a tribal context, coupled with the
571 idea of self-help make for a political order which is ultimately based upon the law of blood-revenge and feud. At least this is the case where the external system of authority relations is concerned. But force as the ultimate mechanism for the establishment of political order is better considered an extreme, and only one of the mechanisms used by the Bedouins in the process of conflict regulation. The attempt is to establish a balance of rights, concerning honor and property, and not to go beyond another's boundaries lest he retaliate. Force, as a coercive institution, can never be the sole basis of political structure, as Schapera has shown in the case of the Bergdama and Bushmen (1956:211-221). Thus the Bedouins say blood-revenge would be impossible within the secondary corporate group; relations this important cannot be based upon force. In the case of homicide within this group compensation is immediately forthcoming.

Also, it has been pointed out that self-help and collective responsibility do not operate indiscriminately. That is, an individual cannot depend upon the backing of his group irrespective of his own motivations in a particular situation which calls for retaliation or threatened the group with retaliation. Individual responsibility figures in cases

571 672 other than those dealing with blood-revenge too. For instance, *613 in matters concerning personal debts incurred, the group is 571 672 not responsible for the individual. The Bedouins say that if a man has the money he must repay his debts: if he does not *613 426 have the money, then he must ask a rich relative to pay his debts for him. He is then in debt to his relative and, out of respect for him, should not borrow money or go into debt [558] again. If he does, he will bring dishonor ('ar) to his • [681] family and they will, ultimately, banish him. There was dis- 682 agreement among my informants as to whether or not they *613 should contribute to a diiya which was compensation for an 829 intentional slaying. Some said that they would not question 124 the motives of their kinsman who has killed because "we are together in the good and the bad, and I must pay for him just as he must pay for me." But others held the opinion, which I feel was a prevailing one, that one must take into account the justifiability of the killing. This seems to have been the case in the past, for the Bedouins say that traditionally the bait of the killer had to pay one-half of the diiya.

*613 All things political somehow relate to the payment 682 of blood-money. We have seen that the essential function 681 of the 'aqila, and even the condition of his taking office, 182 refers to the responsibility of collecting the diiya from 571 the members of his group. The criterion of being a member

of the group, of joining a new group, or of becoming a man, all refer to the notion of sharing in the payment of the diiya. All obligations and sanctions which carry the force of law in Bedouin society also are directly related to compensation and retaliation. Weber (1954:110) has stated the general case: "The wergilt debt as set by the judge was the most ancient debt and all forms of obligation have derived from it." Evans-Pritchard (1940:171) has stated the particular case: " . . . Nuer law, in so far as it applies to a study of political relations, must be treated in connexion with the blood-feud." The blood-feud and the diiya are institutions by which authority groups interact and political order is maintained. Blood-revenge, or the threat that it may take place and spread, is a most serious sanction in the Bedouin political system. Of the twenty-two cases of conflict in al-Qasr about which I have good details, nine of these deal with homicide or attempted homicide, and thirteen involve quarrels over rights to land, water, and women which could have led to violence had not arbitration succeeded. In fact, seven of the nine cases of personal injury began over property rights.

Rules regarding the diiya in Bedouin society apply at all levels of the lineage structure. This seems important to note for it points up an unusual degree of autonomous authority at the tertiary level. Research on segmentary societies has often stressed the fact that compensation is

671 They said that if a man
562 insisted on keeping a promiscuous wife, his family would
684 "write a barawwa aginst him." I heard of no sex offenses in
•681 al-Qasr while I was there.
[114]

671 The penalty for stealing, according to the 'awaiyid,
685 is that the thief shall pay compensation, by himself, in the amount of four times the value of the stolen object. On the
* [613] other hand, if the thief is a poor man, he will pay thrice the value of the stolen object and the remaining fourth will be paid by his lineage.

671 The 'awaiyid recognizes the territorial claims of the
685 lineage. Disputes arising over conflicting claims to land
*613 and wells are handled at Bedouin courts in much the same way
578 as personal injury cases are, with one exception. Usually, a
[554] larger number of elders and rajal khair will be consulted in an advisory capacity by the 'awaaqil handling the case. The 'awaaqil consider the specific history of a particular piece of land or well (for instance, each well is known by its own name), and determine the ownership in accordance with the testimony of elders and individuals of high social status. Most of the problems over land and water rights in al-Qasr have reference to what is still considered lineage-owned
685 territory in the barley-and-pasture sector. In the 'izba
578 sector, conflict over land ownership rights, since they are
648 rights which are registered with the government, is settled in the Egyptian court of law. Only one such case came up while

*613 ultimately, all-out warfare: the role of 'aqila is most
578 critical at this level. Abou-Zeid (1966:259) has suggested
182 an explanation for the delicate balance of political relations which exists between secondary lineage groups. He thinks that

[579] > . . . in the segmentary society of the Bedouin of the Western Desert . . . honour has played, and still plays, a most vital role in the field of social control, besides providing an effective code of morality . . . A slight offence inflicted against a lineage . . . is taken as an unfavorable humiliation requiring immediate retaliation to wipe out the shame, regain honour, and restore the same relations as formerly between the groups.

682 Homicide and wounding cases, which usually develop over con-
683 flicting claims to land or water rights, are most prone to
578 lead to grand-scale conflict. Thus the 'aqila will always
*613 mediate and adjudicate these cases whereas he will not necessarily intervene in those cases involving tertiary groups where appeals to moral solidarity and kinship unity may succeed in restoring relations. It is difficult to muster evidence for this contention since conflict between tertiary groups is more of a private matter than it is public, and, once settled, such conflict is not likely to be discussed, or even admitted.

*613 Most of my details on conflict regulation and the
578 judicial process in al-Qasr involve political action between
619 secondary or primary groups, eighteen of the twenty-two cases
•681 in fact. Of the nine cases dealing with personal injury (eight

*613 cases of homicide and one case of wounding) one was at the
578 tribal level; three at the primary level; three at the
619 secondary level; and two at the tertiary level. Of the
681 thirteen cases dealing with property rights over land, water, or women, none took place at the tribal level; four were at the primary level; seven at the secondary level; and one at the tertiary level. One case dealing with marriage rights took place within a tertiary segment and concerned the legitimacy of a man to claim his bint 'amm. Twelve of the twenty-two cases occurred within the 'Aishabat tribe. Of the ten cases of conflict involving units from outside the 'Aishaibat, six cases were between primary units, three cases were between secondary units, and one case involved the 'Ali Ahmar with the Harabi of Libya.

In almost every case involving primary units and tribal units, the two opposing authority groups were actually secondary groups who had the backing of their primary groupings. The case in which the 'Ali Ahmar mobilized to deal with a problem in Libya probably represents an atypical case in history. It is unlikely that tribal groups of this size
[648] could mobilize in time of war or peace, and in this particular case the good international relations of Egypt and Libya were at stake.

784 There is another realm of sanctions which can be in-
695 voked in cases concerning homicide, wounding, theft, and
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•681 property disputes, and I shall briefly discuss this before
695 I proceed to describe Bedouin legal processes. Besides the
784 threat of blood-revenge and fines of money, the individual, or group, who violates the moral and legal norms of Bedouin society may be faced with sanctions of a sacred nature. In
695 any case where clear evidence is lacking, one litigant may request that that other party swear the oath (yamiin Allah)
+613 in support of his claim. In all three corporate charters
695 presented earlier in this chapter, those of 'Ailit Ma'fas,
695 'Ailit Lazumi, and 'Ailit Abu Qarasa, support of lineage-mates through the oath was a condition of group membership.
[672] Collective responsibility not only applies in the case of secular things, i.e., sharing the blood-money and the exercise of blood-revenge, but also where the possible curse of God is concerned.

695 When one party to conflict requests that the oath be administered as a means of settling a dispute, the other party will always accept because it is assumed that in this way both litigants "will get their rights." The party taking
695 the oath must be supported by a number of his relatives
602 ('umraa al-dam) who are willing to risk the consequences, and
+613 who are chosen by the other party. If a man is unable to muster the required number of kinsmen to take the oath, and the number is always relative to the seriousness of the offense of which he is accused, then this is taken as a sign of his untruthfulness and he loses his claim.

695 below will show how a "bad oath" can work directly on the
784 false witness.

784 Divine sanctions enter into other aspects of the
626 Bedouin judicial process and function to maintain social
626 control in al-Qasr. If we can speak of a standard, or
•681 minimal sanction, in Bedouin law it would be the dhabiiha and 10 L.E. In any case, however small the offence might be, the litigant found to be in the wrong will have this judgment made against him. But in almost every case "the
[788] party who takes his rights" will refuse the dhabiiha and
[292] 10 L.E. and insist instead upon a ritual three cups of tea. An individual refuses the dhabiiha as an act of brotherhood and thanksgiving that the quarrel has been settled. The Bedouins point out the practical factor that very few men in al-Qasr can afford to part with even one lamb. On the
626 other hand, in more serious cases, such as homicide, which
681 occur in the external sphere of political relations and
682 threaten to disintegrate the political community, the parties
264 involved will actually eat a whole meal together. In this case, the dhabiiha is accepted, for the act of commensality is deemed necessary for reconciliation.

626 But whether or not conflict is concluded by a simple
182 ritual or a large feast, the prevailing mood is one of
771 gratitude that the secular bonds of brotherhood and a pre-ordained sacred order have been maintained. The Bedouin

577 771 183 According to this 'aqila, the "good man" is the "good Muslim" who observes the pillars of Islam (fasting, praying, making the pilgrimage, and alms-giving). Also, the "good man" does not steal or lie, and this leads, importantly enough, to social accord.

121 • 681 In light of the preceding discussion of authority and law, we can now offer a description of the Bedouin judicial process in action. Southall (1956:121-151) has drawn the 121 681 114 distinction between internal and external delicts on the bases of kinds of sanctions rendered, and whether or not chiefly authority mediates conflict. Such a distinction can be only partially applied in the case of the Bedouins of the Western Desert. The kind of sanctions operating in the internal political system do differ from those applied in the external political system, though not to the same degree which is true 121 of Southall's Alurland. On the other hand, since Bedouin 681 society, lacking political centralization, cannot be character- 692 ized as a segmentary state with distinct spheres of authority 642 at successive levels of the lineage structure, the intervention or non-intervention of chiefly adjudication and decision-making cannot serve as a basis for differentiating political * [613] action. Rather, the lone political office of the 'aqila [627] involves itself in all arbitration which cannot be successfully concluded by the mechanism of familial authority. There are [648] just two exceptions which apply to this latter statement:

12| first, the government may enter into conflict cases which
• 681 are judged to be out of control and involving the larger tribal
692 units; secondly, litigants, whether exercising internal or
648 external political relations, have the right to take their
[626] case to a rajal khair. Both exceptions represent informal processes of social control in al-Qasr: the first case rarely happens, and the second case seems to occur quite frequently but no recordings of the settlement are made.

681 Sanctions in the Bedouin legal system conform to what
12| Radcliffe-Brown referred to as secondary sanctions: "These are concerned with the actions of persons or groups in their effects upon other persons or groups" (1952:209). Also, it
[671] would seem that Bedouin law is one of private delicts as opposed to a law of public delicts:

[692] > In the procedure of a law of private delicts a person or a body of persons that has suffered some injury, loss or damage by infringement of recognized rights appeals to a constituted judicial authority, who declares some other person or body of persons within the community to be responsible and rules that the defendant shall give satisfaction to the plaintiff, such satisfaction frequently taking the form of the payment of an indemnity or damages. A private delict is thus an action which is subject to what may be called a restitutive sanction (Radcliffe-Brown 1952:213).

681 In Bedouin society, delicts are private since they involve
675 individuals or lineage groups, but the restitutive sanctions
671 to which they give rise are backed by communal consensus expressed through public approval in general, and by the twin

charters of Bedouin society, the rawaabit al-'awaaqil and the 'awaiyid Awlad 'Ali. Again, following Radcliffe-Brown (1952:212-219), sanctions expressed in al-Qasr may be considered civil as opposed to criminal sanctions since, even in the case of intentional homicide, the emphasis is upon restitution and the restoration of the "good society" rather than upon punishment. The Bedouin legal system is one which deals with private delicts, and which depends upon secondary social sanctions and ritual sanctions for the arbitration and settlement of disputes.

Since neither a dichotamy between private and public delicts nor a differential distribution of authority at the various levels of the lineage structure obtain in the uncentralized political system of the Bedouins, political action and type of sanction will be described in terms of whether or not they occur in the internal political system of the secondary or domestic group, or in the external system where interaction between secondary, primary, or tribal segments takes place.

The most striking difference between the two systems of political action rests with the fact that the lex talionis, retaliation regulated by custom, does not operate within the secondary group. In the two cases of killing between tertiary groups of 'Ailit Ma'fas and 'Ailit Lazumi already given, compensation was immediately paid: the incidents were both settled and "forgotten." In conflict situations arising in the

external system, however, the law recognizes retaliation, a life for a life. Still, even in this case, Bedouin values expressed through the 'awaiyid try to avert bloodshed and feuding by showing "the good path" and providing the means for settlement through compensation.

Just as the Bedouin accepts the 'awaiyid as a set of of ideals calculated to regulate conflict, he paradoxically claims the right to impose retaliatory sanctions as a just conclusion to conflict. One Bedouin said that the greatest sin which a man or group can commit is to accept the diiya and then take his blood-revenge and return the money. Presumably, a person or group commits no outrage if they refuse the diiya with the understanding that blood-revenge will be taken. In al-Qasr, retaliation and the 'awaiyid are mechanisms of social control and dispute settlement. A political office exists, i.e. the 'aqila which functions over the total range of political action, and the process of adjudication and compensation in the form of indemnity payment represents an institutionalized alternative to retaliation. In all cases of dispute, ritual or religious sanctions back up social sanctions. God is a third party to all conflict, and this is made manifest in the reading of the Fatiha or the oath-taking ceremony. In order to describe how authority and sanctions operate in Bedouin society, a number of examples are presented below. Some of the cases are the statements of informants about

what happened; some of them are my translations of legal documents which informants permitted me to see; a few of the cases happened while I was in the field and represent my reporting of what happened. I have arbitrarily divided the cases into those involving personal injury and those concerning property rights. In each case, I indicate at which level of the authority structure the conflict and settlement has taken place.

Legal Cases Pertaining to Personal Injury

Two cases of killing have been discussed previously. Below are a number of cases dealing with personal injury which occurred in the external political system at the various levels of segmentation. The first three cases involve conflict between secondary lineage segments of the 'Aishaibat tribe; the next two cases take place at the primary and sub-tribal levels, but note that secondary segments are the actual functioning units involved; the final case, an unusual one, deals with conflict with "foreigners" at the tribal level. Note that the 'aqila as a corporate representative is active in these cases. The third case presented below is a translation of an actual document showing how the nazaala (discussed above) functions as a formal mechanism of conflict regulation.

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792
562 The second, rather complex, case occurred while I was in the field. Once again, the role of the "holy man" is shown to operate in cases dealing with women. Shown here also is an interesting example of the cultural definition of abnormality.

*613 No Date. Case: Quarrel between 'Ailit al-Abaidi ('Ali Abyad)
578 and 'Ailit al-Afrad ('Ali Abyad) over marriage rights. A man
582 from al-Abaidi agreed that his daughter could marry a man but
792 the rest of the 'aiela did not approve of this marriage. Since the man could not go to his 'aqila, who disapproved of the marriage, he took his problem to a "holy man." The "holy man" decided that the girl should marry the man she wanted to marry, but he was afraid that this would cause trouble in the 'aiela. The "holy man" decided to marry the man and woman, [586] and then to divorce them for a period of one year so that the conflict would abate. The girl's father knew of this marriage but the other members of the 'aiela did not. After a period of one year, the groom went to the "holy man" and said: 'Decide anything that I can do, but I must have the girl." The "holy • [681] man" decided to make him pay a kubaara (expiation) fee of [684] 100 L.E. to the girl's 'aiela, and he married them again.

*613 Date: 1965. Case: Quarrel within a tertiary segment of the
619 Qinaishat tribe concerning marriage rights. A girl from the
578 Qinaishat tribe had refused to marry her paternal cousin, but
582 he was insistent upon his right to have her.

554 The rajal khair, then, is a broker in social relation-
571 ships, a manipulator of loyalties. As a member of the "status
627 group," he can afford to spend time and money in courting his fellow tribesmen, and, as a result, can accrue prestige and loyalty. This role, like that of the 'aqila, is a secular
[681] one. The sanctions which it controls are as economical as those of the 'aqila's are political. In this sense, they are differentiated from the role of rajal saalih whose sanctions are sacred in nature.

554 The traditional role which we define as that of the
792 rajal saalih, "the holy man," was probably much more important
[178] in the past than it is today. In al-Qasr, there are only two rajal saalih who share in traditional power: the one is a resident of al-Qasr proper, and the other, a member of the prestigious Sanusi family, lives near Marsa Matruh.

The rajal saalih of al-Qasr, i.e. the local "holy man," is assured of status because he is an ashraf, one who claims descent from the family of the Prophet. He is also a
[561] member of the elder age-set, and while he is not rich, he cannot be considered poor. Though the "holy man" al-Sanusi
[793] lives near Matruh, he participates in the authority structure of al-Qasr and is a member of the "status group." He is sometimes referred to as rajal saalih kabir, "a great holy man," by virtue of his Sanusi heritage.

[771] The relative unimportance of this role as compared to that of the rajal khair in conflict regulation is a function

aspect of the social life that one may call law and other aspects. This 121 114 671
does not pose any problem for those who use the concept of law in a very wide and general sense to man "the totality of people's culture" (Hartland 1924:191). But for later writers, who tend to take a more or less restricted view of law, the problem was there. Malinowski states that the rules of law in primitive society stand out from other social norms in that they are felt and regarded as "obligation of one party and the rightful claim of another." This, of course, gives law a very broad definition and does not really help in distinguishing law from non-law.

One of the most commonly used criterion is that of a "sanction" behind 121 114 671 681
the legal norms. But the mere fact that legal norms have sanctions behind them does not help in drawing the line between them and other norms since all norms are backed by sanctions of some kind or another. It is the kind of sanction, then, not just any sanction, that differentiates law from non-law. In other words, there are classes of sanctions that may be called "legal sanctions." For Malinowski, the loss of reciprocal relations in primitive society constituted the sufficient basis for the legal sanctions (1934). Allen (1958) maintained that legal sanctions are "completely compulsory." "No one is under an absolute compulsion to visit the barber or to wear garments " (1958:59), while, on the other hand, members of the society are under an absolute compulsion not to steal or take the life of another person. Like Malinowski's notion of the loss of reciprocal relations, Allen's concept of "absoluteness" as the basis of legal sanctions is not adequate. For even under the modern legal system, were the penalty for stealing or murder specific and clear, the individual is not under an "absolute" compulsion not to steal or kill. He still can, and the mere existence of the penal institution in modern societies is a living proof that many do violate the legal norms if they are willing to take the risk of such violation, the same risk the person takes who violates the norm

of modesty and walks naked in the streets. Some may even find it easier to accept the risk of penalty for stealing than the social sanctions for violating the norms of modesty.

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But although the notion of absolute vs. relative compulsion is arbitrary and artificial as a criterion for defining legal rules, yet Allen is close to another related and widespread criterion of legal sanctions, that is, the idea of the "use of force." Hoebel maintains that "the really fundamental sine qua non of law in any society - primitive or civilized - is the legitimate use of physical coercion.... The law has teeth, teeth that can bite if need be..." (1961a:26) Pound defines law as "social control through the systematic application of the forces of a politically organized society" (1910-11:591). This definition has later been adopted by Radcliffe-Brown (1940) who considers the obligations imposed upon the individual but for which there is no sanction backed by the use or the possibility of use of physical force as merely a matter of social conventions or custom but not law.

It is evident, then, that those who used the concept of "coercion" as the basis for their distinction of law needed a further specification of the concept. For, as Hoebel has noticed, "There are as many forms of coercion as there are forms of power...and only certain methods and forms are legal" (1961:26). He states that coercion by gangsters is not legal coercion; neither is the parents' physical coercion if it is extreme in form. The essential element in legal coercion according to Hoebel, is "the general social acceptance of the application of physical power, threat or, in fact, by a privileged party, for a legitimate cause, in a legitimate way, and at a legitimate time." The privilege of applying physical force constitutes, according to Hoebel, the official element in law. The person who is recognized as having the right to exercise force is the symbol of authority. This does not mean that he has to be an official or a holder

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of any permanent office; it is any person who is exercising the legitimate use of force. Simple as the above argument might seem, it really offers very little in refining our conception of legal sanctions. For we are still left with the question of how a person acquires the right to exercise the physical force. What gives his action the legitimacy that is otherwise lacking in other forms of coercion? In trying to deal with this problem anthropologists resorted to a concept that is used by the analytical jurists, that is, the court. There is a basic difference, however, between the anthropologists' view of the court and that of the analytical jurists. The latter see the court as the ultimate source of law: court creates the law. Anthropologists, on the other hand, tend to use the court as the source of law but as a criterion of its existence. An example of such views is Max Radin who maintained that the infallible test "for recognizing whether an imagined course of conduct is lawful or unlawful... is to submit the question to the judgment of a court" (1938:1145).

Anthropologists differed among themselves, however, on what constitutes a court. While Radcliffe-Brown (1940) insists that it must be a body of people acting on behalf of the community as a whole and therefore does not exist in all societies, Hoebel (1961), on the other hand, extends the concept to include the diffused public opinion or sentiment of the people in a given society as a kind of court that gives legitimation to the use of force by individuals or groups in the absence of a recognized body acting on behalf of the community. He sees a court in cases of self-help where the aggrieved party or his kinsmen carry on the procedures of redress without the intervention of a third party. He maintained that if the procedures are right, there will be "at least the compulsion of recognized 'legal' procedure, though the ultimate court may be the 'bar of public opinion'" (1961:25).

modern court system may be viewed as a form of appeal to the tribal justice. One has to be careful, however, in calling such a procedure an appeal, since the tribal proceedings have no relevance in the court proceedings.

The duality is more serious in criminal cases. When an act is defined as illegal by both the tribal and modern law, persons committing it come automatically under the jurisdiction of both laws. As long as such acts remain unknown to the police, the duality of procedures is not undertaken. This is possible in minor cases of assault or theft or adultery. But in major cases, such as homocide or serious assault resulting in the serious injury of a tribal member, it is difficult to keep the news a secret from the authorities. The funeral proceedings in the former cases and the medical attention needed in the latter cases are hard to conceal. Besides, serious cases start a whole series of mediations and go-betweens which always become the general knowledge in the entire area and the subject of conversation among the people. When the authorities know about such cases, they have to take immediate action to bring the offender to trial, even when the government authorities know that the tribal proceedings are being conducted in the case. Some attempts are made by both the tribal law and the modern law to minimize the effect of that duality. It is common that when the district attorney knows that a certain criminal case has been successfully solved according to the tribal proceedings, to ask for the minimum penalty for the offense. On the side of the tribal proceedings, once the case has been solved, the witnesses needed to testify for the prosecutor are instructed by their fellow tribesmen to refrain from giving the information

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required for the indictment of the offender according to the modern legal system. If this is not possible and the offender is sentenced by the government court, only half the tribal settlement is paid, and the rest is postponed pending the release of the offender. If the offender is executed or he dies in prison, then the unpaid part of the settlement is dropped.

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[681]
[885] Each Aqila is responsible for submitting to the Amar a list of the Sayems in his bait, and this will be the basis for establishing the share of the bait in payment or receipt of the money.

Article 5:

No Aqila can act on any matter involving loss or gain to the Amar without the presence of the other Awaqil of the Amar, unless an urgent matter occurs in which waiting for the rest of the Awaqil might jeopardize the interest of the Amar. In such cases the Awaqil present can act on behalf of the Amar as a whole.

Article 6:

[672] The following acts should not involve the Amar as a whole and the
[673] offender is considered individually (or with his own Bait) responsible for them:

1. Theft and cheating.
2. Insult or disrespect of a younger member of the Amar to an older person whether from the Amar or not.
3. Entering someone's tent or home without permission.
4. Seduction of women (including rape and adultery).

[681] In all the above cases the individual has to bear the responsibility for his own actions. For to let the Amar pay for him in such circumstances is to encourage him and other such members of the Amar to commit more of such acts and bring disgrace to the Amar. If the offender is unable to pay for his crime, his nearest male kin should pay for him in accordance with the Awlad Ali Daraieb. Such payments are considered as personal debts which the offender has to pay back as soon as he is financially able.

Article 7:

[627] When an older person does injustice to a younger one, the latter should take his complaint to the Aqila of his own bait. The Aqila in turn should take the matter up with the Aqila of the older man or to all the awaqil of the Amar if the matter is serious enough. The awaqil must assess the facts and prevent the older man from doing any more injustice to the younger man and have the former compensate him for any damage he might have caused the younger man by his actions. If the awaqil fail to do this and if their failure resulted in the younger insulting or hurting the older, his acts become no longer an individual responsibility for which he has to pay alone, and the Amar should pay for him.

Article 8:

[627] No members of the Amar should take sides in disputes involving families or individuals outside the Amar unless the awaqil in the Amar investigate the matter and the reasons for the dispute and decide that the Amar as a whole should be on one side of the dispute or the other.

613 Another factor which led to the need to formalize the rules of the
578 Amar was the increase in the kind of disputes for which there is no pro-
672 vision in the customary law of Awlad Ali. Such disputes arise mainly out
671 of situations which are relatively novel to the area. A large number of
681 these situations involve the relationship between the tribal population and the government authorities recently taking a major part in managing the affairs of the area. There were no rules in Awlad Ali law to guide decisions in cases involving financial liability of a member of the Amar in cases such as confiscation of smuggled goods, destruction of government property, or false testimony leading to the conviction of a fellow tribesman by the government authorities. The list of cases such as these is rapidly increasing. Many members of the Amar refuse to share in the payment of liabilities arising out of such cases on the basis that since no provision has been made in the customary law of Awlad Ali, then the Amar as a whole should not take corporate responsibility for such actions. They assert that corporate responsibility of the Amar is the exception rather than the rule and therefore, where there is no specific rule, the responsibility is an individual one. Others insist that it is the corporate responsibility of the Amar in such matters that maintains the Amar as a group and gives incentives to the members to retain their membership in the Amar, and therefore, should be the rule rather than the exception, covering any form of liability unless individual responsibility is specified.

613 This made it essential to specify in some kind of formal statement
672 which liabilities are to be considered collective for which the Amar has
675 to pay as a corporate unit and which are to remain as individual responsibility. This is done either by listing the cases of individual

613 Other tribal segments outside the Aggary amar supported the position of
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578 Qudura, and most took his position to prove their notion about his hon-
156 esty and the fact that despite his poverty, he could not be bribed. They were also pleased with Qudura's trick which demonstrated Hakim's dishonest
613 techniques. Within the Aggary amar, the general sentiment was still with
578 Hakim although his confession of cheating Qudura made it difficult to
156 support him openly. They directed their attack against Qudura who in their view violated the solidarity of the amar and even of his bait and showed it as divided and noncohesive. They were also fearful that Qudura's
[685] refusal to pay would cause the amar to pay the Geneishat the full compensation for the action of Rabbuh, a sum which, as one said, would put the amar in debt for generations to come. The strongest impact of the events affected bait Asabei'itself and left it one step from complete fission into three distinct groups. Shei'eb, finding the tide turning against Hakim, found a chance to assert his claim to the position of the Aqila, stating openly that he would never forfeit his hereditary right. On the other hand, finding the popularity of Qudura increasing rapidly, he started attacking him verbally and even threatened to beat him. He in-
[681] sisted that Qudura and his sons should be excluded from the amar and given the barawa.

613 The word "barawa" is derived from the Arabic verb "bara" which means to
681 cure one's self of an illness. It also means to sever social ties with
[192] undesirable persons. The term is used among Awlad Ali in a much restrited sense to refer to the process by which a tribal segment detaches itself from any responsibility for the actions of a particular member. It is

613 mainly a declaration that, that particular person is no longer a member
• 681 of the tribal segment and that his actions should not in any way reflect upon the tribal segment. The tribal segment referred to is usually the amar since it is only politically corporate group amoung Awlad Ali. The procedure is usually undertaken in cases of habitual offenders whose actions consistently bringing liability to the amar or disgracing it in relations with other tribal groups in the area. Due to the seriousness of the procedure (since it leaves the individual without the protection of his group), it is restricted. First, to announce the barawa of any of its members the amar has to get the unanimous agreement of all adult males of the gorup as represented by their Awaqil of their respective [675] baits. Lately such decisions have to be put in writing. The barawa [593] from the amar does not include the man's father, brothers, or sons. [672] These immediate relatives remain responsible for his actions even if they desire to detach themselves from such responsibility. This is mainly maintained not so much for the protection of the repeated offender but rather for the protection of unsuspecting people who happen to have dealings with him and who would be protected by the corporate responsibility of the man's immediate kin. In addition to repeated offenders, the [626] barawa or the threat of it is used to back the awaqil in their exercise of persuasion to get members of their baits to agree to their decisions, expecially those affecting the amar, like the collection of bloodmoney or the taking of the oath.

A man, on his part, may ask to be given a barawa from his amar. In this case, as shown in the amar papers of Aggary, he has to give good reasons for such a demand. The awaqil of the amar meet and discuss such

582 557 of parley land or a well or to make him a partner in a business or smuggling activities or even as revenge on his uncle by keeping his daughters unmarried. In 1961 the heads of 25 prominant baits of various tribes in the area of Matruh met and decided that the right of ibn 'amm had become a major problem, and that invoking that right when the man had no intention of marrying the girl had resulted in a number of disputes that became serious over a period of time. They felt that the time was suitable to revise that right and make it subject to the concept of fair behavior applicable to other rights. They wrote a new rule which specifies that the man has the right to prevent his cousin from marrying an outsider or a more distant relative only if he himself intends to marry her either in the present or in the reasonable future. If the circumstances show that he cannot do so, then he forfeits the right.

[558] [681] To prevent his cousin from marrying another man without a proven intention on the part of the man to marry her himself in the foreseeable future, is considered as an unreasonable behavior for which ibn 'amm could be liable to pay kabara to his uncle as well as to the prospective groom. It also denies him the right of taking her away from [683] her marital residence by force. If he does this, he would be liable to the compensation for assault. The agreement was signed by the awaqil and is considered binding as far as the baits they represented are concerned. Other tribal segments in the area refuse to abide by the agreement and consider it as a pretentious departure from the ways of Awlad Ali which should not be encouraged. Even within the tribal segments involved in the agreement, there have been reports of individuals who refused to [629] abide by the agreement. In certain of these latter cases, the ibn 'amm selected as his mardi a member of a tribal segment not involved in the agreement and therefore not morally bound to abide by its contents.

593 594 606 586 627 792 [779] went to see Muftah and his company. Half an hour later the religious man came and took Hemeida aside and talked to him in a very low voice, then left the tent again. A few minutes more had passed; everyone returned to the tent; Muftah was not angry anymore. The religious man read the fatha, or the beginning sura of the Koraan, then said that the souls were now pure and that Hemeida was considered as a son of Muftah and that disagreements such as this should not alter the good relations between the two. He said that the devil had found his way into the souls of the two people, but now, thanks to God and the good people present, they both had come back to their senses. Hemeida then rose and went to where his father-in-law was sitting and shook hands with him. Then he [581] handed the religious man ten pounds which the latter passed to Muftah and promised to send him a goat as a gift to his daughter. Muftah left the tent and went to the tent of the women. When he came back he announced that a goat had been slaughtered and that everyone was invited to eat. Everybody then left and Muftah promised to return his daughter to her husband the following day.

593 606 557 586 [429] While the right of the father to take his daughter away from her husband constitutes a check on the authority of the latter and insures the wife good treatment by her husband and her in-laws, not infrequently that right has been invoked for personal or individual interest on the part of the woman's father or her closest male kin. Several cases have been cited in the area where the father or guardian had invoked the right to force the husband to concede to certain demands of the wife's guardian, even when the wife objected to those demands or disagreed with her guardian. One of these is the case of Mabroka who is married to a distant

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586 Taking his daughter away from the marital residence is treated as an undisputed right of the father. This is true whether he is justified in his actions or not and whether the girl approves of her father's decision or not. The general view is that the father, having raised his daughter, is entitled to her obedience and that taking her away from her husband, even against her will, is the symbol of authority over her. It also signifies that the girl has someone to look after her, to protect her and prevent the husband or any member of his family from mistreating her. Awlad Ali differentiate, however, between cases in which the father has exercised his right in an arbitrary and unreasonable manner and those in which he has reasonable grounds for his actions. A father is considered justified in taking his daughter away if her husband or members of his family fail to fulfill their obligations towards the wife or members of her family. Mistreatment of the woman (the definition of which will be discussed later), and disrespect to members of her family, or preventing her from visiting her family or them visiting her in the customary specified manner are always justifiable grounds. As a
• [681] justifiable action, the father is not obliged to return his daughter until he gets full apologies and any gifts for the woman or himself that he considers as kabara. If the husband refuses to concede to the demands of the father, the latter can force him to divorce her without having to return the bridewealth to the husband. Although the father's right still exists when no justifiable grounds are present, in this case he is required to return his daughter to her husband after a short period. If he refuses,
[681] the husband is entitled to ask for a kabara. He also can divorce his
[583] wife and is entitled to get back his mahr and possible all the marriage expenses. It is this possibility of having to pay back the mahr and

681 this variation is that committing the adultery within the camp of the
558 husband constitutes a greater humiliation, since it affects his honor
684 among his neighbors. Also, adultery inside the tent of the couple carries with it the possibility of rape, while adultery outside the tent at least implies an element of consent on the part of the wife. The
[583] penalty in the case of adultery is the return by the wife's father of the mahr and all other expenses of the marriage ceremony and the gifts the husband had presented during the engagement period. This is a further indication that the father of the wife is still responsible for her behavior even after she is married. It is in this respect that the crime of adultery differs from theft. In the case of theft, the
[685] thief has to return twice the amount stolen and in the case of repeated offenders, four times the amount stolen. This is in addition to a certain amount of money as kabara. Yet, in the latter case the kabara is not specified and is subject to the proof by the victim that the theft constituted an insult to him. This insult is assumed in the case of adultery, which makes the kabara in the case of adultery part of the punishment--an integral part of the punishment. The kabara is not among
[613] the collective responsibility of the amar and is paid only by the person involved, unless he is totally unable to pay or refuses to pay. In such
426 cases, his closest male kin (his father, son, or brother) pays on his
593 behalf with the understanding that such payment constitutes a debt which
681 should be repaid. The person paying on his behalf in this case can go
684 to his tent and take by force anything of value, such as blankets, uten-
558 sils, or even sheep and goats, and keep them as pawns until the debt is paid.

586 562 574 the man she chooses. She informs him before she enters his house that she is the wife of so and so and the daughter of so and so and that she is throwing herself on him to protect her from her husband with whom she no longer wishes to live. Like the right of refuge, the man cannot [778] refuse to let her in; and from this moment until her dispute with her husband is resolved, she is considered as his house guest and is entitled to all the hospitality a guest receives. If he refuses to extend that hospitality or refuses to take her in, she can ask for a mi'ad [629] [581] and is entitled to kabara from him. There has been no reported incidents in which a man refused that right to a woman. As soon as she settles down in the host's house, the latter takes immediate measures to find the husband and to convince him to let his wife go. In doing this, the man uses all the power of persuasion. The man selected for this purpose 586 562 574 is usually a respected man who can put pressure upon the husband. Sometimes he has to bribe the husband to release the wife, paying from his 554 own money. The man has to have money, not only to be able to support [556] the wife during her stay in his house and to bribe the husband, but also because in certain instances he has to pay the husband the mahr that the father of the wife had taken in order to free her. The next step after getting the agreement of the husband to divorce his wife is to contact the father of the wife or her guardian and convince him to pay the mahr to the husband. If the father does not agree, or if he is financially unable to do so, the man on whom the woman has thrown herself is supposed to pay from his own money. In cases where the woman left the husband to be married to another man with whom she had had a relationship, the respected man tries to have the future husband pay the present husband the mahr he is supposed to pay the woman after she is divorced from her

CHAPTER VI

HOMICIDE AND BODILY INJURIES

Part 1: Homicide

579 Fighting is quite common among Awlad Ali. Many of these fights involve a large number of individuals and result in many casualties 579 and sometimes even deaths. Fighting is considered "shar," or evil, 673 for according to Awlad Ali, it threatens the social cohesion which is 182 highly valued in the area. Yet, although undesirable, fighting and [682] even homicide are not considered a crime against society and sometimes are viewed as necessary to safeguard individual and collective rights in the absence of an established authority which could protect these [177] rights. Although this absence of an authority is remedied now by the [692] introduction of state administrative justice, this has not yet achieved enough efficiency and recognition to replace the old tribal system.

619 In the tribal system, there is no concept of individual punishment 681 inflicted upon the suspect. There is no recognized authority to inflict 692 it. The mardi or the 'aqila who performs the function of dispute settle- [629] ment in the case of homicide has no power to pass or inflict any punishment. His role is restricted to mediation between the two parties involved 682 as was earlier mentioned. Homicide, like all other wrongs among Awlad Ali, 673 are private wrongs affecting the individual or a group of individuals. [182] The main purpose of the tribal proceedings in the case of homicide is to restore some form of harmony and order among the group. This harmony is sometimes restored by killing the murderer or any member of his vengeance 682 group, or amar. Feuds may result from such killing, and a few instances 628 of feuds have, in fact, been recorded in the area (although not in the

105 On the other hand, there is always a feeling of rivalry and hostility
598 between the different tribal segments which goes back to the era of
571 tribal warfare. Thus, the social relations among the tribal population are characterized by a certain amount of ambivalence which is hidden behind a facade of formality in the way tribal members treat one another
105 in day-to-day activities. There are certain rules of etiquette describ-
571 ing the way members of the same tribal segment should behave toward one
576 another and toward other tribesmen and outsiders. Failure to abide by
[598] these rules may subject the violator to a symbolic fine of a goat or a
574 sheep slaughtered for a feast to which everyone is invited. These feasts,
[182] or dinners as they are called, have various functions, the most important
105 of which is the integrative one. In an area where the population is usu-
571 ally dispersed, these dinners offer an opportunity to the tribesmen who
574 happen to be in the area at the time of the feast to attend, where they
182 eat, meet other tribesmen, and exchange information about what is happening in other parts of the area. It is from such dinners that the tribesmen get to know about the available pastures, about the prices of sheep and goats in different markets, and about who is doing what and where. The occasion also signifies the restoration of the violator of the rules to the social life of the group and the reinforcement of those rules.
105 This is also true with the tribal meetings, or mi'ad, which are held to
629 announce settlements in more serious cases. It is on this basis that
182 the mi'ad should not be considered as a tribal court. It is more of a
[598] social occasion where food and drinks are served and where parties in-
574 volved and all those invited by them talk about everything except the
[598] dispute itself. In certain instances, the financial settlement agreed upon in the informal mediation is exaggerated when announced in the mi'ad

105 so that part of it may be reduced in honor of some prominent members
629 who are attending the meeting. When part of the financial agreement is
182 reduced in honor of a person, this creates an obligation on the part of
681 that person to reciprocate in a similar situation when one arises. This
554 creates an active interest in the settlement on the part of individuals who otherwise are not involved, and insures the durability of the settlement. The social cohesion is maintained.

105 The need to keep friendly relations with all tribesmen is reflected
571 in the judicial process in its procedural aspect, as well as in judicial
578 reasoning, that is, the logic according to which facts in certain cases
627 are assessed. With regard to procedures, there is an emphasis on avoid-
182 ing face-to-face confrontations between the disputing parties until an agreement has been reached by means of the mediators. Only then is it that the parties see and talk to one another. This is especially true in serious cases such as homicide or serious assault where face-to-face confrontation is likely to lead to more hostilities.

105 The emphasis on reconciliation may explain, at least in part, the in-
571 formality of the judicial process. Leaving the process of dispute settle-
627 ment informal gives it a measure of flexibility which permits the treatment
182 of each case as unique without being tied down by rigid formal rules. This does not mean, however, that there are no rules to be followed, or that there is no place for legal precedents. It simply means that the rules are very general and that the legal precedents are used merely as a guide in solving similar cases. The main guide remains, however, the desire to achieve a successful settlement that satisfies all parties. It is only through achieving such successful settlements that the social order is maintained and the tribal cohesion is secured.

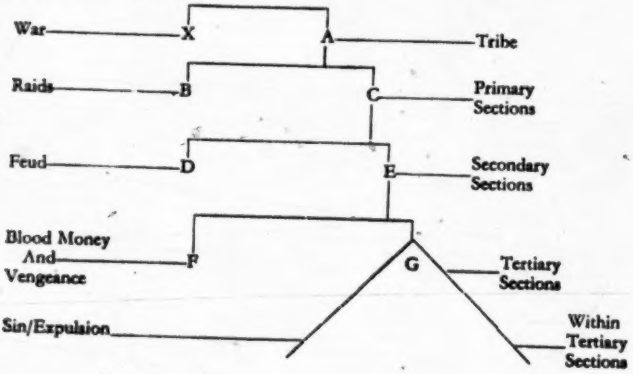
5: Peters E-5 (1948-1950) 1967 MT9 Libyan Bedouin MT9
Cyrenaica

would have dropped in on the camp. In another situation, two men entered a shop in a market-place; inside sat two men of a feuding group who, instead of retreating hastily, greeted those who had just entered, and the latter returned the greeting with blows on the head from the butts of their rifles. Markets in Cyrenaica are recognized to be places of peace. In their actions the two offenders not only injured two others but also broke a taboo in a public place. The victim's group now had to avenge not only the injury but the insult that the breach of taboo carried with it, as well. In most feud relationships this is characteristic. It is never a matter of a simple homicide, but of killing a man at the entrance to his tent, between the centre poles of his tent, or taking the life of a minor, or an elder too old to carry arms and so on. Each successive killing ensures that the hostile relationships will be perpetuated.

The third step in this exposition, therefore, is the association of a state of feud with the secondary order of segmentation.

When the relationships between the structurally superior primary tribal sections are examined, the arguments against the necessity for peace are stronger than in the case of secondary sections. Relationships between them are few and irregular. Only occasionally do members of these groups meet, and then often accidentally; very many men of collateral primary sections are complete strangers one to the other. If a homicide occurs between two primary sections it is unlikely that any attempt to open negotiations will be made. The offender's camp may be raided by a *ghazi* recruited from the victim's kinsmen. There would be no question of these primary sections going to war. On a raid firearms may be used, but the action is limited to a strike-and-run affair. If the issue is joined and members of both sides are ranged against each other they fight with sticks to avoid large-scale slaughter: warfare must not be allowed within the tribe. Wars belong to intertribal relationships. For one of these wars, apart from hearsay evidence, some records exist. These tell of a war which took place during the period 1860 to 1865, in which there were planned campaigns, the organization of fighters into groups, and provisions for a labour force in the home territory, large enough to produce sufficient food to maintain an army in the field. During this war several hundred people were killed.

At this point, it is possible to summarize the stages in this exposition of the Bedouin view in diagrammatic form.



indeed welcome unfaithfulness on his wife's part. If a man is very old, and his wife very young, it is likely that she will entertain lovers; if a man leaves camp for a long absence his wife may not remain chaste. In both cases, if the liaisons lead to the birth of a child, particularly a male, the husband greets the news with unrestrained enthusiasm — "praise be to God," as their saying goes. Incapacity[7] to produce offspring, if a husband is convinced of it, may lead him to delegate a kinsman to serve his wife for procreative purposes: he has the legal authority, as husband, to do so, and to require his wife to submit, for the only alternative, if he is not to die without "issue," is to "take" a son from his brother and fulfill the obligations towards this boy required of a pater, namely, attend to his circumcision, provide him with teaching in the Koran (a duty neglected by most) and give him the wealth with which to marry.

Granting the acceptance of paternity, whatever the circumstances of conception, a male child, *ipso facto*, acceeds to membership of a corporation, and is subject to the authority of that group in a number of matters. In many situations it would appear that a son is under the father's political control. At a moot, the son, if he speaks at all, will do so only to corroborate his father. Discussions among men in a small camp evoke a similar pattern of behaviour. Until the father becomes senile or dies, a son cannot publicly pursue an independent course, but he desists by virtue of his relationships with his father *qua* pater, not because of his father's political power to coerce. All men of a corporation, in any event, "speak with one word" at a moot, and a son, by his assent to the common view, also supports his father; in so doing he yields to the political authority of his corporation, and not that of his father.

Membership in the corporation invests a man with other privileges and duties. Protection against external enemies comes within the corporation's jurisdiction, although in a particular situation, the father may well be the person who dispenses it. Complimentarily, if a man commits an offense against a person not of his group, whatever private thoughts his father may have about the act, the responsibility lies not on his shoulders but on the group, and he is compelled to share this responsibility equally with all other members. For example, if a son commits a homicide the father bears the same legal responsibility for the act, and is under obligation to contribute the same share of blood-money as he would be if the act had been perpetrated by any male of the group other than his son. Even in a narrower field of relations between father and son the group exercises its authority. Acting as pater, a man may punish his son, physically or otherwise; he may not do so to the point of injury, for personal injury comes within the legitimate sphere of the corporation. A man's "bone" belongs to his group; he is an in-

[7] Impotency is a special case, because it is dishonourable for a woman to remain wife to an impotent man. She cannot divorce him, but her father can insist on a witnessed test of impotency and, if it is proven, the husband is compelled to divorce her. Barrenness, obviously, is a different matter.